

1 THE STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA. ) SS: JOSE A. VILLANUEVA, J.

3 IN THE COURT OF COMMON PLEAS  
4 CRIMINAL DIVISION

5 THE STATE OF OHIO, )  
6 Plaintiff, )  
7 -v- ) Case No. 514703  
8 DEMONTE MERRIWEATHER, )  
9 Defendant. )

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11 PARTIAL TRANSCRIPT OF PROCEEDINGS  
12 - - - - -

13 Whereupon the following proceedings  
14 were had in Courtroom No. 20-A, the Justice  
15 Center, Cleveland, Ohio, before the Honorable  
16 Judge Jose A. Villanueva, commencing on  
17 Wednesday, October 21, 2009 upon the indictment  
18 filed heretofore.

19 APPEARANCES:

20 **WILLIAM D. MASON, ESQ.**, Prosecuting Attorney,  
21 by: **BRIAN McDONOUGH, ESQ.**, Assistant County  
22 Prosecutor, and **MATTHEW WATERS, ESQ.**, Assistant  
23 County Prosecutor,

24 on behalf of the Plaintiff;

25 **THOMAS SHAUGHNESSY, ESQ.**,  
**THOMAS CONWAY, ESQ.**,  
and **OSCAR RODRIGUEZ, ESQ.**

on behalf of the Defendant.

Carla V. Kuhn, RPR, CRR  
Official Court Reporter  
Cuyahoga County, Ohio

1                    FRIDAY MORNING SESSION, OCTOBER 30, 2009

2                    \* \* \* \* \*

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4                    (Thereupon the following discussion  
5                    was had between Court and counsel at  
6                    sidebar.)

7                    - - - - -

8                    MR. SHAUGHNESSY: I didn't know how you  
9                    wanted me to address specifically the issue from  
10                    the motion in limine.

11                    I'm objecting to the testimony of Nate  
12                    Willson for all the reasons that we've set forth  
13                    in our motion in limine and the hearings that we  
14                    had. I wanted to preserve that record for  
15                    appeal.

16                    THE COURT: Okay.

17                    I believe I indicated before the lunch  
18                    break that I would address this on the record  
19                    more extensively, but frankly, I've had a chance  
20                    to consider all of the law that was offered in  
21                    regards to whether or not a so-called ballistics  
22                    or firearm expert can testify and give an opinion  
23                    that a particular bullet or shell came from a  
24                    particular gun.

25                    As I understand the current state of the  
                    inquiry in this area, it has to do with whether

1 or not a ballistics expert can frankly claim  
2 to have the necessary foundational,  
3 statistical, and empirical basis for saying  
4 that, in general, a particular shell casing  
5 came from a particular weapon, also, whether  
6 shell casings themselves can be identified as  
7 coming from the same batch or run and so  
8 forth.

9 I understand the nature of the  
10 debate in this case. We don't have a witness  
11 who's going to identify a particular shell  
12 casing coming from a specific weapon. We  
13 also have, in this case, a fairly controlled  
14 environment, meaning that all these shell  
15 casings were collected in a fairly confined  
16 area very shortly after it appears that they  
17 were discharged and that witnesses have  
18 testified to that fact.

19 In this circumstance, the ballistics  
20 expert, the witness for the State of Ohio,  
21 has received and analyzed the specific shell  
22 casings selected from this scene shortly  
23 after the shootings, so this is not a  
24 circumstance where the witness is going to be  
25 trying to identify a particular shell casing

1 to a remotely discovered gun or comparing  
2 shell casings from multiple sites.

3 I asked the defense witness during  
4 her testimony whether there was a difference  
5 in the type of testimony and the criticisms  
6 in effect related to the situation that we  
7 have where all the shell casings are  
8 collected from the same site, and the  
9 situation where for example you have a bullet  
10 shell casing collected in Cleveland, a gun  
11 found at some point in California. That was  
12 just my example.

13 Her testimony was, yes, it would be  
14 useful, and she didn't see any problem with  
15 the ballistics or firearm witness testifying  
16 as to their analysis of the shell casings,  
17 perhaps how it operates, what one would  
18 expect when a gun fires a bullet and so  
19 forth.

20 As I understand the general  
21 criticisms of ballistic expert testimony,  
22 those general criticisms that were being made  
23 by the state's expert witness do not appear  
24 to be the kind of criticisms that would be  
25 applied to the situation that we have here in

1           this case; therefore, I am going to permit  
2           the witness for the state to testify as to  
3           his examination of these shell casings.

4                       I'm going to permit the witness to,  
5           if he's able to, to indicate whether, based  
6           on the facts of this case, the fashion in  
7           which these shells were collected, the  
8           proximity to the event in question and so  
9           forth, whether he can segregate these shells,  
10          shell casings, distinguish among them.

11                      I am going to permit, if he can  
12          offer an opinion, whether in his opinion,  
13          based on his experience and expertise,  
14          experience and training rather, whether he  
15          can say they came from different guns and  
16          whether any of the shell casings came from  
17          the same gun, so I'll permit him to testify  
18          in that regard.

19                      MR. SHAUGHNESSY: Could we just note  
20          an ongoing objection so we don't interrupt  
21          the flow of the testimony?

22                      THE COURT: Yes.

23          \* \* \* \* \*

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## C E R T I F I C A T E

1  
2 I, Carla V. Kuhn, Official Court  
3 Reporter for the Court of Common Pleas,  
4 Cuyahoga County, Ohio, do hereby certify that  
5 as such reporter I took down in stenotype all  
6 of the proceedings had in said Court of  
7 Common Pleas in the above-entitled cause;  
8 that I have transcribed my said stenotype  
9 notes into typewritten form, as appears in  
10 the foregoing Transcript of Proceedings; that  
11 said transcript is a partial record of the  
12 proceedings had in the trial of said cause  
13 and constitutes a true and correct Transcript  
14 of Proceedings had therein.  
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16  
17  
18  
19

20 *Carla V. Kuhn*

21 -----  
22 Carla V. Kuhn, RPR, CRR  
23 Official Court Reporter  
24 Cuyahoga County, Ohio  
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